

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D30010
H/kmb

_____AD3d_____

Argued - January 11, 2011

REINALDO E. RIVERA, J.P.
JOHN M. LEVENTHAL
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-05365

DECISION & ORDER

Nanuli Davarashvili, et al., respondents, v ABM
Industries Incorporated, et al., appellants.

(Index No. 17785/07)

Gallo Vitucci Klar, New York, N.Y. (Kimberly A. Ricciardi of counsel), for appellants.

Annette G. Hasapidis, South Salem, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal from an order of the Supreme Court, Queens County (Markey, J.), dated February 24, 2010, which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiffs contend that the defendants' negligent placement of a "parking delineator" created a tripping hazard. The defendants failed to establish a prima facie case that they did not create the condition, or that the condition was open and obvious and not inherently dangerous (see *Manicone v City of New York*, 75 AD3d 535, 537; *Shah v Mercy Med. Ctr.*, 71 AD3d 1120).

The defendants' remaining contentions are without merit (see *Espinal v Melville Snow Contrs.*, 98 NY2d 136, 141-142; *Manicone v City of New York*, 75 AD3d at 537; *Cooper v American Carpet & Restoration Servs., Inc.*, 69 AD3d 552, 554).

Accordingly, since the defendants failed to establish their prima facie entitlement to

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judgment as a matter of law, we need not examine the sufficiency of the plaintiffs' opposition papers, and the defendants' motion for summary judgment dismissing the complaint was properly denied.

RIVERA, J.P., LEVENTHAL, SGROI and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court